

The Commonwealth of Massachusetts, Department of Mental Health

HIV/AIDS

Policy # 99-2

Date of Issue: May 21, 1999

Effective Date: June 1, 1999

Approval by Commissioner

Signed by: Marylou Sudders

Date: May 21, 1999

I. PURPOSE:

This policy establishes the Department of Mental Health's (DMH) procedures regarding Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS) assessment, testing and counseling for Patients and Clients. It also sets out minimum requirements for Staff training and Patient and Client education about HIV/AIDS related issues. In addition, this policy clarifies and interprets statutes related to HIV/AIDS that protect the confidentiality of HIV testing (M.G.L. c. 111, s. 70F), stipulate the age of consent for counseling and testing (M.G.L. c. 112, s. 12F) and safeguard information regarding the serostatus of a Patient or Client as contained in his or her medical record (M.G.L. c. 123, s. 36). Finally, this policy seeks to ensure that Patients or Clients at-risk for or infected with HIV are treated with respect, dignity and sensitivity to the biopsychosocial context in which the disease frequently occurs. This policy replaces DMH Policy #94-2.

II. SCOPE OF POLICY

This policy applies to all Facilities and Programs, as defined in this policy, and to DMH case managers.

III. DEFINITIONS

- Acquired Immunodeficiency Syndrome (AIDS): A condition caused by the Human Immunodeficiency Virus in which the individual's immune system is severely damaged, placing the individual at risk for developing a variety of life threatening illnesses.
- Client: A person who is receiving DMH continuing care services in a DMH-operated or contracted community program.
- Facility: An inpatient facility, unit or bed operated or contracted for by DMH, including all DMH-operated inpatient units at a Department of Public Health hospital, and all Intensive Residential Treatment Programs (IRTP).
- HIV Antibody Test or HIV Test: A test that reveals the presence of antibodies to HIV. Human Immunodeficiency Virus
- (HIV): A viral agent causing AIDS that is transmitted from one person to another by blood or certain body fluids: through sexual contact; from a mother to her infant during pregnancy, delivery or breast-feeding; from the blood of an infected person entering the body of an uninfected individual.
- Patient: A person receiving services at a Facility. Program: A DMH-operated or contracted organization or other entity that provides community-based mental health services for Clients. Staff: An employee at a Facility or DMH-operated or contracted community program.

IV. POLICY SUBSTANCE:

A. CLINICAL INFORMATION:

HIV/AIDS continues to be a major public health problem among people with serious mental illnesses. HIV/AIDS is a disease typically associated with sexual and drug use behaviors among at-risk populations. According to the Centers for Disease Control, HIV is transmitted under certain identifiable conditions, namely through unprotected sexual contact, exposure to infected blood or blood components principally associated with intravenous drug use, and perinatally from mother to neonate. To date, only blood, semen, vaginal secretions and mother's milk are associated with virus transmission. There is no evidence confirming the transmission of HIV through casual contact. HIV infection is diagnosed by a blood test that detects antibodies to HIV. A seropositive or positive (+) test result indicates exposure to the virus. A positive test is almost always repeated using a more elaborate test to ensure the accuracy of the result. A seronegative or negative (-) test result

indicates that no antibodies to HIV are present, which generally means an individual is not infected with HIV. There is however a period of time after initial exposure (about six weeks in over 95 per cent of cases, but up to nine months in rare instances) when an individual is infected by HIV and can transmit the virus to another but may not test positive for HIV. In addition, there are other circumstances where an individual with HIV may have a negative test result.

B. NON-DISCRIMINATION:

Patients, Clients and Staff known or presumed to be infected by HIV shall not be discriminated against in care, treatment or employment consistent with the Americans with Disabilities Act (ADA) 42 USC s. 12102, et seq. and M.G.L. c. 151B.

C. RISK ASSESSMENT:

1. All Patients and Clients shall receive an initial risk assessment for HIV. The assessment must be repeated annually, except in circumstances where more or less frequent assessment is appropriate. Patients and Clients shall be told at the time of the assessment that they have the right to refuse to answer any and all questions without negative consequences. A refusal by the Patient or Client to answer the questions or participate in the risk assessment shall be documented. Care should be taken that assessments do not become intrusive and harmful to the Patient or Client and that multiple assessments are not done.
 - a. For a Client residing in the community, the Client's case manager shall be responsible for ensuring that the initial and subsequent assessments are completed in accordance with this policy and that duplicate assessments are avoided to the extent possible. The case manager is responsible for coordinating this activity but is not necessarily the individual responsible for conducting the assessments.
 - b. For a Patient residing in a Facility, the Patient's multidisciplinary treatment team shall be responsible for ensuring that the initial and/or subsequent assessments are completed in accordance with this policy.
2. The risk assessment shall be conducted by someone with training and experience in assessing HIV and AIDS-related issues, including, but not limited to clinical staff, and to the extent possible, shall be completed in a setting other than a residence, clubhouse or vocational rehabilitation program where the potential for therapeutic boundary violations are of concern. Whenever possible, the risk assessment should be conducted by an individual with whom the Patient or Client has established an on-going trusting relationship. The risk assessment should be conducted in a setting that affords privacy and confidentiality. The risk assessment should be conducted when a Patient's or Client's mental status is stable and he/she can reasonably be expected to voluntarily participate in the assessment. Where the Client prefers to have the risk assessment conducted by his or her primary health care provider, the case manager shall make every effort to arrange an appointment for this purpose and obtain documentation of that referral.
3. Each Facility or Program shall have Staff capable of conducting risk assessments. Every Program must cooperate with DMH's case managers to ensure that assessments are conducted by the most appropriate Program or individual and that duplicative assessments are avoided.
4. Documentation if Risk Assessment is Conducted by Facility or Program
 - a. All Facilities and DMH-operated Programs shall use Form DMH-HIV 1/1999 - the Risk Assessment and Education Record -(Attachment I) to assess a Client's or Patient's HIV risk and shall include completed copies in the Patient's or Client's record. DMH-contracted Programs may use the Risk Assessment and Education Record or another comparable assessment form approved by the DMH Area Office, and completed copies shall be included in the Patient's or Client's record.
 - b. A progress note shall be made in the Patient's or Client's record documenting that a risk assessment was completed, or offered and refused, or whether information was gleaned from other sources, and summarize recommendations made for follow-up by the individual completing the assessment. Based on the risk assessment, the Facility or Program completing the assessment shall include HIV risk-reduction strategies in its treatment plan (Facility) or Program Specific

Treatment Plan (Program) for those Patients or Clients at high or moderate risk. This shall not preclude developing and implementing HIV risk-reduction education for all Patients and Clients.

- c. As part of the annual review of the Client's Individual Service Plan, pursuant to 104 CMR 29.10, the Client's DMH case manager shall document that an assessment was completed and enter any appropriate information, including risk-reduction strategies, in the Client's Individual Service Plan. If significant clinical events or the Client's individual circumstances suggest a need for more or less frequent assessments than once each year, this also must be documented at this time.
- d. For Patients, documentation that an assessment was completed shall be part of the periodic review as required by 104 CMR 27.11.

D. HIV COUNSELING AND TESTING:

1. Routine HIV antibody testing is neither clinically indicated nor legally permissible and such testing may not be used as a precondition to placement in a Facility or Program.
2. After completing an assessment, the assessor should encourage a Patient or Client at high or moderate risk for HIV to consider pre-test counseling and/or testing and shall inform the Patient or Client of the various options available for pre-test counseling and testing. After the Patient or Client or guardian agrees to pre-test counseling and/or testing, appropriate supports shall be offered to facilitate the process and the assessor shall assist the individual in selecting the appropriate pre and post-test counseling services and test site. No referral for testing shall occur until a determination is made that a Patient or Client, not under guardianship, is presently competent and agrees to testing, or a guardian consents to testing. Patients and Clients may refer themselves for testing.
3. Whenever possible, pre and post-test counseling, HIV testing and treatment should occur in a primary medical care setting where the complex medical needs of Patients and Clients who may be infected with HIV can best be met. However, testing may occur in any number of settings, including a primary medical care facility where a Patient or Client receives treatment, an anonymous test site for HIV testing coordinated by the Department of Public Health (DPH), and a Facility (testing which occurs in a DMH-operated Facility may utilize the Massachusetts State Laboratory for test results through arrangement with the DPH HIV/AIDS Bureau). If testing occurs in a DMH-operated Facility, then the Facility shall comply with all applicable statutes and regulations, as well as DPH guidelines, regarding pre and post-test counseling, consent and confidentiality.
4. Certain psychiatric symptoms are sometimes related to an HIV opportunistic infection in the central nervous system. In such cases, an HIV Antibody Test may be necessary for differential diagnosis. Such testing is subject to all of the requirements in this policy concerning informed consent, confidentiality and documentation.
5. Minors. M.G.L. c. 112, s. 12F permits a minor to seek medical care without parental consent if the minor "reasonably believes himself to be suffering from or to have come in contact with any disease defined as dangerous to the public health.....; provided, however, that such minor may only consent to care which relates to the diagnosis or treatment of such disease." In accordance with this statute and with Department of Public Health (DPH) policy (Adolescent HIV Counseling and Testing Policy, December 1990), children or adolescents under the age of 18 may request and receive HIV testing without parental consent.

E. CONSENT AND CONFIDENTIALITY:

1. HIV testing requires the informed consent of the Patient or Client or his/her parent or guardian. A competent Patient or Client may refuse to participate in the assessment or testing. Consideration of seeking court authority to override a guardian's refusal of testing may be sought in rare circumstances where the Patient or Client is assessed as being at moderate or high risk for HIV, and where such refusal does not appear to be in the Patient or Client's best interest.
2. All information, including information concerning a Patient or Client taking an HIV test, the laboratory results of such a test, and the diagnosis or treatment of HIV disease are confidential pursuant to M.G.L. c. 111, s. 70F.
3. All information, including the HIV/AIDS risk assessment, and all information concerning a

Patient or Client taking an HIV test, the laboratory results of such a test, the diagnosis or treatment of HIV disease, and any related progress notes, shall be kept in the Patient's or Client's medical record and is considered confidential information, subject to all applicable laws and regulations concerning privacy of medical records. Any release of information from the medical record pertaining to the Patient's or Client's HIV/AIDS assessment, status or treatment is subject to the special consent procedures detailed in section E. 6.

4. When a parent or guardian of a minor consents to testing of the minor, the parent or guardian shall be notified of the test results. When the minor requests testing without the consent of the parent or guardian as per section D5 above of this policy, the information may be released to the minor's parent or guardian only with the minor's consent or a court order, pursuant to 104 CMR 28.09, or when a physician determines that the life of the minor is endangered pursuant to M.G.L. c. 112, s. 12F.
5. Violations of confidentiality requirements or disputes with respect to the release of confidential information regarding a Patient's or Client's HIV status can result in a complaint being filed under DMH investigation regulations (104 CMR 32.00 et seq.) and may also be subject to disciplinary action and civil liability.
6. The release of medical records must contain specific, written informed consent by the Patient or Client, or guardian, if applicable, to release information concerning his or her HIV serostatus. Such written consent shall be in addition to and separate from a general consent to release medical information and shall state the purpose for which the information is being released.
7. Risk Behaviors and Disclosure. There may be circumstances when a clinical staff person has a reasonable basis to believe that an HIV-infected Patient or Client is engaging in behaviors that pose a risk for infection to an identifiable other. In such circumstances, the clinical staff person shall counsel the Patient or Client regarding behaviors that pose a risk for infection. Counseling may include:
 - advising the Patient or Client of risk reduction practices;
 - facilitating a discussion about risk reduction between the Patient or Client and his/her partner; or
 - requesting the Patient or Client who is competent and psychiatrically stable to sign a release for the clinical staff person to speak with the identified other person about the Patient or Client's HIV serostatus. Pursuant to M.G.L. c. 123, s. 36B, when a Client has communicated to a licensed mental health professional an explicit threat and has the present intent and ability to carry out the threat by infecting an identifiable person with HIV, or the Patient or Client has a known history of physical and sexual violence and the mental health professional believes an identifiable other to be at risk, the mental health professional shall take reasonable precautions to protect the identifiable individual(s) from such risk of harm. Whenever possible, any breach of confidentiality should occur only after consultation with the individual or individuals the Facility or Program designate(s) for this purpose. When a Patient or Client has communicated to a non-licensed mental health professional an explicit threat and has the present intent and ability to carry out the threat by infecting an identifiable person with HIV, or the Patient or Client has a known history of physical and sexual violence and the non-licensed mental health professional believes an identifiable other to be at risk, the non-licensed mental health professional shall immediately contact a licensed mental health professional with direct responsibility for the Client. The licensed mental health professional shall take immediate steps to ascertain the necessity, pursuant to M.G.L. c. 123, s. 36B for protecting identified other individual(s) at risk of harm, including, where possible, contacting the Patient or Client or guardian, if applicable. Whenever possible, any breach of confidentiality should occur only after consultation with the individual or individuals the Facility or Program designate(s) for this purpose. Each Facility and Program shall designate an individual or a team of individuals with whom its licensed mental health professionals can consult in determining if a particular situation falls within the parameters of this section. To the extent practical, the applicable DMH Legal Office

or the Program's legal counsel shall be designated or included as part of the team. Because the issue of disclosure is fact-driven, every situation shall be reviewed independently and decisions made on a case by case basis. Consultation is not a prerequisite to disclosure. The final decision is that of the licensed mental health professional.

F. PROPHYLACTIC TREATMENT

In a particular incident where a clinical staff person in a Facility or Program determines that the prophylactic treatment for exposure to HIV may be appropriate (e.g., a situation involving the commingling of blood), the clinical staff person may ask the Patient(s) or Client(s) involved in the incident, or guardian(s), if any, to consider HIV testing and/or releasing the Patient(s) or Client(s)' HIV status to the individual for whom the prophylactic treatment may be appropriate. A referral for testing by the Facility or Program in this situation must comply with the requirements of sections IV. D. and IV. E. of this policy. Similarly, the release of HIV information by the Facility or Program must meet the requirements of section IV. E.

G. TRAINING:

1. A minimum of one (1) hour of training is mandated annually for all Staff regarding issues applicable to HIV/AIDS in people with serious mental illness. Training is to include current clinical information, including information on infection control, as well as information on DMH policy.
2. Additional training, sponsored by DMH, is required for all non-independently licensed Staff who conduct HIV risk assessments with Patients or Clients, and all DMH case managers. However, in a Facility, at least one individual who is responsible for implementation of this policy, representing all Staff licensed to practice independently in that Facility, must attend the training. The training for Staff conducting risk assessments will be organized by the DMH Division of Clinical and Professional Services and will cover risk assessment, risk-reduction strategies and interpretation of the DMH HIV/AIDS policy. Each Area will identify Facility and Program Staff, and other Area staff, as appropriate, to attend the training.

H. PATIENT/CLIENT EDUCATION:

Taking into consideration an individual's mental status, cognitive abilities, age, gender, linguistic and cultural background and sexual orientation, each Area shall have a plan to ensure that each Patient and Client in the Area, at least annually, has the opportunity to participate in an HIV/AIDS educational program. The educational programs shall include such information as: recognition of personal risk, prevention, motivating change, HIV counseling and testing, needle exchange programs and enhanced risk reduction skills; and encourage the use of preventive devices, such as condoms. All Facilities and Programs are required to cooperate in the implementation of such a plan, which may include offering or co-sponsoring such educational programs and/or helping to facilitate Patient or Client participation in such programs.

V. IMPLEMENTATION RESPONSIBILITY:

The Area Office shall be responsible for compliance with this policy by Facilities, Programs and case managers. Each Area Director shall designate an individual to coordinate training and Patient/Client education opportunities in the Area and to serve as liaison with the DMH Central Office Division of Clinical and Professional Services regarding HIV/AIDS. This individual will also be responsible for ascertaining that Area Staff who conduct HIV risk assessments have been trained. Staff should consult with their Area liaison regarding HIV/AIDS and the interpretation of various aspects of this policy. Although this policy is applicable to all Clients, it shall be phased in, as each Client is assigned to a case manager, pursuant to 104 CMR 29.00. However, nothing in this policy or plan for phased implementation shall preclude a Program from ensuring that a Client at-risk is assessed for HIV/AIDS infection, whether or not that Client has a DMH case manager. This policy, with respect to Patients, shall be effective immediately.

VI. POLICY REVIEW:

This policy shall be reviewed annually, and is subject to revision at any time.